

# SENATE BILL 451

P2

0lr2056  
CF 0lr2967

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By: **Senators Conway, Currie, Della, Exum, Forehand, Frosh, Garagiola, Gladden, Harrington, Jones, Kelley, King, Lenett, Madaleno, McFadden, Middleton, Muse, Peters, Pugh, Raskin, Rosapepe, and Stone**

Introduced and read first time: February 1, 2010

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Prevailing Wage Rates – Public Works Contracts – Suits by Employees**

3 FOR the purpose of authorizing certain employees to file a complaint with the  
4 Commissioner of Labor and Industry; requiring that a certain complaint filed by  
5 an employee under a certain provision of law is subject to certain investigation  
6 and enforcement procedures; requiring the Commissioner to attempt to resolve  
7 a certain issue internally or issue a certain order under certain circumstances;  
8 authorizing certain employees to seek certain compensation and additional  
9 remedies from certain employers under certain circumstances; authorizing  
10 certain employees or the Commissioner to file certain court actions; requiring  
11 that certain actions be brought within a certain time period; providing that a  
12 certain contract is not a bar to the recovery of certain remedies; authorizing a  
13 court to award certain employees certain wages, other compensation, and fees in  
14 certain circumstances; authorizing certain employees to bring an action on their  
15 behalf and on behalf of certain other employees; subjecting certain persons to  
16 certain civil penalties; prohibiting a contractor or subcontractor from engaging  
17 in certain conduct against certain employees; subjecting a contractor or  
18 subcontractor to certain penalties for certain violations; and generally relating  
19 to private enforcement actions under the State prevailing wage law.

20 BY repealing and reenacting, with amendments,  
21 Article – State Finance and Procurement  
22 Section 17–224  
23 Annotated Code of Maryland  
24 (2009 Replacement Volume)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
26 MARYLAND, That the Laws of Maryland read as follows:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1                                   **Article – State Finance and Procurement**

2    17–224.

3           (a)   (1)   If an employee under a public work contract is paid less than the  
4 prevailing wage rate for that employee’s classification for the work performed, the  
5 employee [is entitled to sue to recover the difference between the prevailing wage rate  
6 and the amount received by the employee] **MAY FILE A COMPLAINT WITH THE**  
7 **COMMISSIONER.**

8                   (2)   A [determination by the Commissioner that a contractor is  
9 required to make restitution does not preclude an employee from filing an action  
10 under this section] **COMPLAINT FILED UNDER THIS SECTION SHALL BE SUBJECT**  
11 **TO THE INVESTIGATION AND ENFORCEMENT PROCEDURES UNDER § 17–221 OF**  
12 **THIS SUBTITLE.**

13                   **(3)   IF THE COMMISSIONER’S INVESTIGATION DETERMINES THAT**  
14 **THE EMPLOYER VIOLATED PROVISIONS OF THIS SUBTITLE, THE COMMISSIONER**  
15 **SHALL:**

16                                   **(I)    TRY TO RESOLVE THE ISSUE INFORMALLY; OR**

17                                   **(II)   ISSUE AN ORDER COMPELLING COMPLIANCE WITH THIS**  
18 **SUBTITLE IN ACCORDANCE WITH § 17–221 OF THIS SUBTITLE.**

19                   **(4)   IF AN EMPLOYER FAILS TO COMPLY WITH THE ORDER ISSUED**  
20 **UNDER PARAGRAPH (3)(II) OF THIS SUBSECTION, THE COMMISSIONER OR THE**  
21 **EMPLOYEE MAY BRING A CIVIL ACTION TO ENFORCE THE ORDER IN THE**  
22 **CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYEE OR EMPLOYER IS**  
23 **LOCATED.**

24           (b)   (1)   An action under this section is considered to be a suit for wages.

25                   (2)   A judgment in an action under this section shall have the same  
26 force and effect as any other judgment for wages.

27                   **(3)   AN ACTION BROUGHT UNDER THIS SECTION FOR A VIOLATION**  
28 **OF THIS SUBTITLE SHALL BE FILED WITHIN 3 YEARS FROM THE DATE THE**  
29 **AFFECTED EMPLOYEE KNEW OR SHOULD HAVE KNOWN OF THE VIOLATION.**

30           (c)   **(1)   The failure of an employee to protest orally or in writing the**  
31 **payment of a wage that is less than the prevailing wage rate is not a bar to recovery in**  
32 **an action under this section.**

1           **(2) A CONTRACT OR OTHER WRITTEN DOCUMENT IN WHICH AN**  
2 **EMPLOYEE STATES THAT THE EMPLOYEE SHALL BE PAID LESS THAN THE**  
3 **AMOUNT REQUIRED BY THIS SUBTITLE DOES NOT BAR THE RECOVERY OF ANY**  
4 **REMEDY REQUIRED UNDER THIS SUBTITLE.**

5           **(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**  
6 **SUBSECTION, IF THE COURT IN AN ACTION FILED UNDER THIS SECTION FINDS**  
7 **THAT AN EMPLOYER PAID AN EMPLOYEE LESS THAN THE REQUISITE**  
8 **PREVAILING WAGE, THE COURT SHALL AWARD THE AFFECTED EMPLOYEE THE**  
9 **DIFFERENCE BETWEEN THE WAGE ACTUALLY PAID AND THE PREVAILING WAGE**  
10 **AT THE TIME THAT THE SERVICES WERE RENDERED.**

11           **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,**  
12 **UNPAID FRINGE BENEFIT CONTRIBUTIONS OWED FOR AN EMPLOYEE IN**  
13 **ACCORDANCE WITH THIS SECTION SHALL BE PAID TO THE APPROPRIATE**  
14 **BENEFIT FUND, PLAN, OR PROGRAM.**

15           **(II) IN THE ABSENCE OF AN APPROPRIATE BENEFIT FUND,**  
16 **PLAN, OR PROGRAM, THE AMOUNT OWED FOR FRINGE BENEFITS FOR AN**  
17 **EMPLOYEE SHALL BE PAID DIRECTLY TO THE EMPLOYEE.**

18           **(3) THE COURT MAY ORDER THE PAYMENT OF DOUBLE DAMAGES**  
19 **OR TREBLE DAMAGES UNDER THIS SECTION IF THE COURT FINDS THAT THE**  
20 **EMPLOYER WITHHELD WAGES OR FRINGE BENEFITS WILLFULLY AND**  
21 **KNOWINGLY OR WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD OF**  
22 **THE EMPLOYER'S OBLIGATIONS UNDER THIS SUBTITLE.**

23           **(4) IN AN ACTION UNDER THIS SECTION, THE COURT SHALL**  
24 **AWARD A PREVAILING PLAINTIFF REASONABLE COUNSEL FEES AND COSTS.**

25           **(5) IF THE COURT FINDS THAT AN EMPLOYEE SUBMITTED A**  
26 **FALSE OR FRAUDULENT CLAIM IN AN ACTION UNDER THIS SECTION, THE COURT**  
27 **MAY ORDER THE EMPLOYEE TO PAY THE EMPLOYER REASONABLE COUNSEL**  
28 **FEES AND COSTS.**

29           **(E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN**  
30 **ACTION FILED IN ACCORDANCE WITH THIS SECTION MAY BE BROUGHT BY ONE**  
31 **OR MORE EMPLOYEES ON BEHALF OF THAT EMPLOYEE OR GROUP OF**  
32 **EMPLOYEES AND ON BEHALF OF OTHER EMPLOYEES SIMILARLY SITUATED.**

33           **(2) AN EMPLOYEE MAY NOT BE A PARTY PLAINTIFF TO AN ACTION**  
34 **BROUGHT UNDER THIS SECTION UNLESS THAT EMPLOYEE FILES WRITTEN**  
35 **CONSENT WITH THE COURT IN WHICH THE ACTION IS BROUGHT TO BECOME A**  
36 **PARTY TO THE ACTION.**

1           **(F) (1) A PERSON FOUND TO HAVE MADE A FALSE OR FRAUDULENT**  
2 **REPRESENTATION OR OMISSION KNOWN TO BE FALSE OR MADE WITH**  
3 **DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR ITS TRUTH OR FALSITY**  
4 **REGARDING A MATERIAL FACT IN CONNECTION WITH ANY PREVAILING WAGE**  
5 **PAYROLL RECORD REQUIRED BY § 17-220 OF THIS SUBTITLE IS LIABLE FOR A**  
6 **CIVIL PENALTY OF \$1,000 FOR EACH FALSIFIED RECORD.**

7           **(2) THE PENALTY SHALL BE RECOVERABLE IN A CIVIL ACTION**  
8 **FILED IN ACCORDANCE WITH THIS SECTION AND PAID TO THE STATE GENERAL**  
9 **FUND.**

10          **(G) AN EMPLOYER MAY NOT DISCHARGE, THREATEN, OR OTHERWISE**  
11 **RETALIATE OR DISCRIMINATE AGAINST AN EMPLOYEE REGARDING**  
12 **COMPENSATION OR OTHER TERMS AND CONDITIONS OF EMPLOYMENT BECAUSE**  
13 **THAT EMPLOYEE OR AN ORGANIZATION OR OTHER PERSON ACTING ON BEHALF**  
14 **OF THAT EMPLOYEE:**

15           **(1) REPORTS OR MAKES A COMPLAINT UNDER THIS SUBTITLE OR**  
16 **OTHERWISE ASSERTS THE WORKER'S RIGHTS UNDER THIS SECTION; OR**

17           **(2) PARTICIPATES IN ANY INVESTIGATION, HEARING, OR INQUIRY**  
18 **HELD BY THE COMMISSIONER UNDER § 17-221 OF THIS SUBTITLE.**

19          **(H) (1) A CONTRACTOR OR SUBCONTRACTOR MAY NOT RETALIATE OR**  
20 **DISCRIMINATE AGAINST AN EMPLOYEE IN VIOLATION OF THIS SECTION.**

21           **(2) IF A CONTRACTOR OR SUBCONTRACTOR RETALIATES OR**  
22 **DISCRIMINATES AGAINST AN EMPLOYEE IN VIOLATION OF THIS SECTION, THE**  
23 **AFFECTED EMPLOYEE MAY FILE AN ACTION IN ANY COURT OF COMPETENT**  
24 **JURISDICTION WITHIN 3 YEARS FROM THE EMPLOYEE'S KNOWLEDGE OF THE**  
25 **ACTION.**

26           **(3) IF THE COURT FINDS IN FAVOR OF THE EMPLOYEE IN AN**  
27 **ACTION BROUGHT UNDER THIS SUBSECTION, THE COURT SHALL ORDER THAT**  
28 **THE CONTRACTOR OR SUBCONTRACTOR:**

29           **(I) REINSTATE THE EMPLOYEE OR PROVIDE THE**  
30 **EMPLOYEE RESTITUTION, AS APPROPRIATE;**

31           **(II) PAY THE EMPLOYEE AN AMOUNT EQUAL TO THREE**  
32 **TIMES THE AMOUNT OF BACK WAGES AND FRINGE BENEFITS CALCULATED**  
33 **FROM THE DATE OF THE VIOLATION; AND**

34           **(III) PAY REASONABLE COUNSEL FEES AND OTHER COSTS.**

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2    October 1, 2010.